

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	
	:	
Defendant.	:	

SCHEDULING ORDER

At Wilmington this _____ day of _____, 2002.

The Court having conducted an initial Rule 16 scheduling and planning conference pursuant to Local Rule 16.2(a) on _____, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a) Initial Disclosures**: Unless otherwise agreed to by the parties, they shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) on or before _____.
2. **Joinder of other Parties and Amendment of Pleadings**: All motions to join other parties and amend the pleadings shall be filed on or before _____.
3. **Discovery**:¹

¹Should the parties desire limitations on the number of depositions, interrogatories and/or requests for production, these limitations should be included in the scheduling order.

a. Initiation of Discovery. The parties are relieved from Rule 26(d)'s limitation on seeking discovery before the Rule 26(f) meeting.

b. Limitation on Hours for Deposition Discovery. Each side is limited to a total of ____ hours for taking testimony by deposition upon oral examination.

c. Location of Depositions. Any party or representative (officer, director or managing agent) of a party filing a civil action in this court must ordinarily be required, upon request, to submit to a deposition at a place designated within this district. Exceptions to this general rule may be made on order of the court. A defendant who becomes a counterclaimant, cross-claimant or third-party plaintiff shall be considered as having filed an action in this court for the purpose of this provision.

d. Discovery Cut-Off: All discovery in this case shall be initiated so that it will be completed on or before _____.

e. Disclosure of Expert Testimony: Unless otherwise agreed to by the parties, they shall file their initial Federal Rule 26(a)(2) disclosure of expert testimony on or before _____, and file a supplemental disclosure to contradict or rebut evidence on the same subject matter identified by another party on or before _____. Along with the submissions of the expert reports, the parties shall advise of the dates and times of their experts' availability for deposition.

f. Discovery Disputes: Should counsel find they are unable to resolve a discovery dispute, they shall jointly contact the Court to schedule a time for an office or telephonic conference to review the matter. No less than **three (3) business days** before the conference, counsel **may** file a **THREE PAGE LETTER**, exclusive of exhibits,

describing the issue(s) in contention. The originals of said letters are to be filed with the Clerk's Office with a copy to the Magistrate Judge. **Motions filed pursuant to Fed. R. Civ. 26 or 37 without benefit of the above-described informal procedure shall be denied.** If counsel for a party believes that a discovery dispute requires resolution on an urgent basis, counsel may contact the Court and request a more immediate office or telephonic conference.

4. **Confidential Documents**: Should counsel find it will be necessary to apply to the court for a protective order specifying terms and conditions for the disclosure of confidential information, they should confer and attempt to reach an agreement on a proposed form of order and submit it to the court within **ten (10)** days from the date of this order.

Any proposed order should include the following paragraph:

Other Proceedings. By entering this order and limiting the disclosure of information in this case, the court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order that may be subject to a motion to disclose another party's information designated confidential pursuant to this order, shall promptly notify that party of the motion so that it may have an opportunity to appear and be heard on whether that information should be disclosed.

If a party contends that information sought in discovery is confidential and the parties have not agreed on the terms of an appropriate protective order, until a protective order is entered, disclosure of that information shall be limited to trial counsel who have entered an appearance and, where appropriate, have been admitted pro hac vice, and to

such other persons as the parties may agree.

5. **Papers filed under Seal:** When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

6. **Interim Status Report:** On _____, counsel shall submit a letter to the Court with an interim report on the nature of the matters in issue and the progress of discovery to date.

7. **Status Conference:** On _____, the Court will hold a Rule 16(a), (b) and (c) conference by telephone with counsel at _____ m. Plaintiff's counsel shall initiate the telephone call. At the time of this teleconference, counsel shall also be prepared to discuss the progress, if any, of settlement discussions and shall be prepared to discuss the possibility of setting up a settlement conference with the Court, counsel and their clients.

8. **Case Dispositive Motions:** All case dispositive motions and an opening brief or memorandum of points and authorities and affidavits, if any, in support of the motion shall be served and filed on or before _____. Briefing will be presented pursuant to the Court's Local Rules with the following page restrictions: opening and answering briefs or memoranda shall be limited to **twenty-five (25) pages**. The reply brief or memorandum shall be limited to **fifteen (15) pages**.

9. **Applications by Motion:** Except as provided in this Order or for matters relating to scheduling, any application to the Court shall be by written motion filed with the Clerk. Unless otherwise requested by the Court, counsel shall not deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the

statement required by Local Rule 7.1.1.

10. **[For Intellectual Property Cases] Tutorial Describing the Technology and Matters in Issue.** [This paragraph in the scheduling order is not a requirement. If the parties believe that it would be helpful to the Court to have a tutorial, it is not required that the tutorial be by video tape. Should the parties determine that another format, such as, a tutorial conference or a computerized presentation, for example, would be more appropriate, or that the tutorial is unnecessary, they may make their suggestions regarding the tutorial during the initial Rule 16 Scheduling and Planning Conference.

Regardless of the format, the tutorial should include (1) a description of the technology in issue and (2) a summary of the parties' primary factual and legal contentions. The tutorial should be filed under seal as part of the Court's file, subject to any protective order in effect. This paragraph may also include the opportunity to comment, in writing (with page limitations) within a reasonable time, on the opposing party's tutorial. Because the purpose of the tutorial is to educate the Court, it should be filed prior to the initial exchanges under paragraph 11. As a result of the format selected, the parties should confirm as to the Court's technical abilities to access the information contained in the tutorial.]

11. **[For Intellectual Property Cases] Claim Construction Matters:** The parties shall contemporaneously file and exchange initial briefs on claim construction issues on _____. The parties' answering/responsive briefs shall be filed and exchanged contemporaneously on _____. No reply briefs or supplemental papers on claim

construction shall be filed without leave of the Court. The initial briefs shall be limited to **thirty (30) pages** and the answering/responsive briefs shall be limited to **fifteen (15) pages**. Any exhibits and/or appendices shall be limited to **fifty (50) pages**, exclusive of the patent, the patent specification and prosecution history.

The claim construction hearing is scheduled for _____ beginning at ____m.²

At least **ten (10) business days** before the initial briefs are due, the parties are to provide a joint submission which is limited to and identifies for the Court the terms/phrases of the claim(s) in issue, and includes each party's proposed construction of the disputed terms/phrases with citation(s) to the **intrinsic evidence** only in support of their respective proposed construction. A copy of the patent(s) in issue are to be attached. In this joint submission, the parties shall not provide any argument.

12. **Pretrial Conference:** On _____, the Court will hold a Rule 16(d) final pretrial conference in Chambers with counsel beginning at ____ m. No less than **twenty-one (21) days** before the joint proposed pretrial order is due, plaintiff's counsel shall forward to defendant's counsel a draft of the pretrial order with the information plaintiff proposes to include in the draft. Within **five (5) business days** from the date of receiving the draft, defendant's counsel shall, in turn, provide plaintiff's counsel with comments on the plaintiff's draft and the information defendant proposes to include in the proposed order.

Unless otherwise ordered by the Court, the parties should assume that filing the

² The inclusion of this paragraph is not intended to require a claim construction hearing.

Pretrial Order satisfies the Pretrial Disclosure Requirement in Fed.R.Civ.P.26(a)(3). Where a case is to be tried to a jury, pursuant to Local Rules 47.1 and 51.1, the parties shall confer and make every reasonable effort to resolve objections, so that a joint filing of the proposed voir dire, instructions to the jury, and special verdict forms or special interrogatories may occur. Any objections or counter proposed voir dire, jury instructions, special verdicts or interrogatories shall be included with these submissions.

The parties shall file the joint proposed final pretrial order, voir dire, instructions to the jury, verdict forms or special interrogatories, consistent with the requirements of this Order and the Final Pretrial and Trial Management Order, no later than **ten (10) full business days** before the final pretrial conference. The **original and one copy** must be filed with the Clerk's Office and a **courtesy copy** sent to the Magistrate Judge's Chambers.

13. **Trial:** This matter is scheduled for a _____ day (jury or non-jury) trial.³ For the purposes of completing pretrial preparations, counsel should plan on each side being allocated a total of _____ hours to present its case.

14. To the extent this order allows or the Court specifically requests or authorizes any copies of writings to be delivered to Chambers, **no originals** of such writings shall be delivered to Chambers.

UNITED STATES MAGISTRATE JUDGE

³If the parties desire a firm trial date with the Magistrate Judge, a consent to the jurisdiction of the Magistrate Judge to preside over trial in this matter must be filed. In addition to filing the appropriate stipulation, the following language should be added after the word trial, "beginning at _____ a.m. in the Magistrate Judge's Courtroom, Courtroom No. _____ on _____."